

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-140759
	:	TRIAL NO. 14CRB-23207
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
IAN PICCIANO,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This is a criminal appeal of a menacing conviction. Ian Picciano argues that the menacing statute is unconstitutional, that the court erred when it excluded some of his evidence, and that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. We affirm the judgment of the trial court.

Mr. Picciano was charged with menacing Barbara Moore following a run-in with her and her husband. According to the Moores, Mr. Picciano mouthed “F you” as they drove by him. Mr. Moore was upset, got out of the car and began to argue with Picciano. According to Picciano, Mr. Moore bumped him with his stomach. In response, Mr. Picciano swung a bag of dog feces at Mr. Moore. When Ms. Moore saw this, she told her grandson, who was also in the car, to call the police. According to Ms. Moore, Mr. Picciano then looked at her and said, “You’re dead. You’re dead.” Ms. Moore testified that she was very scared and afraid that Picciano would hurt her.

For his part, Mr. Picciano claimed that he had said, “Thank you,” not “F you,” to the Moores as they passed. He also testified that he felt threatened by Mr. Moore, and that he had not said anything to Ms. Moore. At the conclusion of the bench trial, the court found Picciano guilty and sentenced him accordingly.

In his first assignment of error, Mr. Picciano asserts that the menacing statute, R.C. 2903.22, is unconstitutionally overbroad and vague. He did not raise the issue below. The failure to raise a constitutional issue at the trial level acts as “a waiver of such issue and a deviation from this state’s orderly procedure, and therefore need not be heard for the first time on appeal.” *State v. Awan*, 22 Ohio St.3d 120, 489 N.E.2d 277 (1989), syllabus. We may, in our discretion, review the issue of the statute’s constitutionality for plain error. *See In re M.D.*, 38 Ohio St.3d 149, 527 N.E.2d 286 (1988), syllabus. But we ordinarily enforce the waiver doctrine unless there is “some extraordinary reason to disregard it.” *State v. Flannery*, 1st Dist. Hamilton No. C-140426, 2015-Ohio-1360, ¶ 7, quoting *Zawahiri v. Alwattar*, 10th Dist. Franklin No. 07AP-925, 2008-Ohio-3473. No such extraordinary reason exists in this case. The first assignment of error is overruled.

Mr. Picciano asserts in the second assignment of error that the trial court abused its discretion by excluding some of his evidence. Specifically, he argues the court prevented him from presenting evidence about an on-going property dispute between him and the Moores, about the police officers’ attempts to resolve the menacing complaint, and about the number of times Mr. Moore pushed Mr. Picciano. We review the court’s decision to exclude evidence for an abuse of discretion. *State v. Maurer*, 15 Ohio St.3d 239, 265, 473 N.E.2d 768 (1984).

No abuse of discretion occurred here. Evidence about the property dispute was presented at trial, but the court prevented Picciano from discussing details that were irrelevant to the menacing charge. Statements allegedly made by police officers about potential assault charges against either Mr. Moore or Picciano were hearsay

and not relevant to the issue of whether Picciano had “knowingly cause[d Ms. Moore] to believe that [he would] cause physical harm” to her. *See* R.C. 2903.22(A). Finally, Mr. Picciano was able to testify that Mr. Moore pushed him multiple times. Further testimony about the fight between him and Mr. Moore was irrelevant. The second assignment of error is overruled.

The final assignment of error is that Picciano’s conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. As to the sufficiency argument, our review of the record reveals that the state adduced substantial, credible evidence from which the trial court could have reasonably concluded that the state had proved beyond a reasonable doubt the elements of menacing. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; R.C. 2903.22(A). And in regard to the manifest-weight argument, our review of the entire record fails to persuade us that the trial court clearly lost its way and created such a manifest miscarriage of justice that we must reverse Picciano’s conviction and order a new trial. *See State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). It was for the jury to assess the witnesses’ credibility. The third assignment of error is overruled.

Therefore, we affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., FISCHER and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on July 17, 2015
per order of the court _____.

Presiding Judge